BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ANITA L. HICKS)
Claimant)
VS.)
) Docket No. 236,88
CESSNA AIRCRAFT COMPANY)
Respondent)
AND)
KEMPER INSURANCE COMPANIES)
Insurance Carrier)

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Jon L. Frobish on December 27, 1999. The Appeals Board heard oral argument May 12, 2000.

APPEARANCES

James B. Zongker of Wichita, Kansas, appeared on behalf of claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Award denies claimant permanent partial disability benefits based on the opinions of the treating physician Dr. Robert L. Eyster and the court ordered independent medical examination by Dr. Philip R. Mills. On appeal, claimant contends she is entitled to a permanent disability award based on the rating by her examining expert, Dr. Pedro A. Murati, a rating of 24 percent to the body as a whole.

Respondent raised no additional issues, contending the Award entered by the ALJ should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. The parties agree that claimant suffered accidental injury arising out of and in the course of her employment with respondent. The issue concerns the permanency of the injury and whether any resulting disability is ratable as a functional impairment under the fourth edition of the AMA <u>Guides to the Evaluation of Permanent Impairment</u> as required by K.S.A. 1999 Supp. 44-510e(a). Claimant contends that Dr. Eyster's 0 percent rating is not credible, in light of the claimant's pain complaints, and that Dr. Mills' failure to assign a permanent functional impairment rating is inconsistent with his diagnosis, in particular the diagnosis of rotator cuff tendinitis. Claimant presents in contravention, the 24 percent rating by Dr. Murati and argues that, at a minimum, claimant is entitled to a split of the ratings or a 5 percent permanent partial disability award for her pain. Work disability is not an issue.

The Board, for the reasons stated in the Award, affirms the finding of no permanent disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated December 27, 1999, should be, and is hereby, affirmed.

Dated this ____ day of May 2000. BOARD MEMBER BOARD MEMBER BOARD MEMBER

c: James B. Zongker, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

IT IS SO ORDERED.